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11

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/147,801 03/11/99 NIKLASSON

B REF/29713/NI

BACON & THOMAS  
625 SLATERS LANE  
FOURTH FLOOR  
ALEXANDRIA VA 22314-1176

HM12/0922

EXAMINER

WORTMAN, D

ART UNIT

PAPER NUMBER

1648

DATE MAILED:

09/22/00

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

# Office Action Summary

Application No.  
**09/147,801**

Applicant(s)

**Niklasson**

Examiner  
**Donna C. Wortman, Ph.D.**

Group Art Unit  
**1648**



☒ Responsive to communication(s) filed on Mar 11, 1999

☐ This action is **FINAL**.

☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 35 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire one month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

## Disposition of Claim

☒ Claim(s) 1-7, 9-12, and 14-16 is/are pending in the application.

Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

☐ Claim(s) \_\_\_\_\_ is/are allowed.

☐ Claim(s) \_\_\_\_\_ is/are rejected.

☐ Claim(s) \_\_\_\_\_ is/are objected to.

☒ Claims 1-7, 9-12, and 14-16 are subject to restriction or election requirement.

## Application Papers

☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.

☐ The proposed drawing correction, filed on \_\_\_\_\_ is ☐ approved ☐ disapproved.

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☐ All ☐ Some\* ☒ None of the CERTIFIED copies of the priority documents have been

☐ received.

☐ received in Application No. (Series Code/Serial Number) \_\_\_\_\_.

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\*Certified copies not received: \_\_\_\_\_

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

## Attachment(s)

☐ Notice of References Cited, PTO-892

☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). \_\_\_\_\_

☐ Interview Summary, PTO-413

☐ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

— SEE OFFICE ACTION ON THE FOLLOWING PAGES —

Art Unit: 1648

The Art Unit location of your application in the PTO has changed. To aid in correlating any papers for this application, all further correspondence regarding this application should be directed to Group Art Unit 1648.

Claims 5, 6, 7, 10, and 11 were amended, claims 8 and 13 were cancelled, and new claims 15 and 16 were added by preliminary amendment. Claims 1-7, 9-12, and 14-16 are pending and subject to restriction as follows.

It is noted that this application has been filed under 35 U.S.C. 371.

Restriction is required under 35 U.S.C. 121 and 372.

This application contains the following inventions or groups of inventions which are not so linked as to form a single general inventive concept under PCT Rule 13.1.

In accordance with 37 CFR 1.499, applicant is required, in response to this action, to elect a single invention to which the claims must be restricted.

Group I, claims 1-3, 7, 9-12, and 14-16, drawn to a virus identified by non-coding viral nucleic acids and to kits and vaccines comprising nucleic acids.

Group II, claims 4, 6, 7, 9-12, and 14-16, drawn to viral proteins and to kits and vaccines comprising viral proteins.

Group III, claims 5, 7-12, and 14-16, drawn to antibodies and to kits and vaccines comprising antibodies.

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Claims 7-12 and 14-16 have been placed in each of groups I, II, and III and will be examined with any one of the three groups, to the extent that they read on the elected invention.

The inventions listed as Groups I-III do not relate to a single general inventive concept under PCT Rule 13.1 because, under PCT Rule 13.2, they lack the same or corresponding special technical features for the following reasons: The viral proteins of Group II are not encoded by the noncoding viral nucleic acids of Group I and thus are distinct products that do not share a common technical feature. The antibodies of Group III are products of mammalian immune systems and as such are clearly distinct from both the noncoding viral nucleic acids of Group I and the viral proteins of Group II. PCT Rule 13.1 does not provide for multiple products.

Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Examiner Wortman whose telephone number is (703) 308-1032. The examiner can normally be reached on Monday through Thursday from 8:00 am to 5:30 pm. The examiner can also be reached on alternate Fridays. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James Housel can be reached at (703) 308-4027. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-0196.

Papers related to this application may be submitted to Group 1600 by facsimile transmission. Papers should be faxed to Examiner Donna Wortman, Art Unit 1648, and should be marked "OFFICIAL" for entry into prosecution history or "DRAFT" for consideration by the examiner without entry. The Art Unit 1648 FAX telephone number for official papers is (703) 308-4242. FAX machines will be available to receive transmissions 24 hours a day. In compliance with 1096 OG 30, the filing date accorded to each OFFICIAL fax transmission will be determined by the FAX

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machine's stamped date found on the last page of the transmission, unless that date is a Saturday, Sunday, or Federal Holiday with the District of Columbia, in which case the OFFICIAL date of receipt will be the next business day.



Donna C. Wortman, Ph.D.  
Primary Examiner

September 21, 2000